AND WHAT WAS THE DEFENDANT'S REACTION?

HE WASN'T SURPRISED.

MR. SAHAM: WE WON'T BE OFFERING THAT, YOUR HONOR.

MS. BLAIR: OKAY.

THE COURT: SO I AM GRANTING THAT MOTION.

OKAY. NEXT ONE YOU HAD IS EXCLUDE EVIDENCE OF OTHER CRIMES OR ACTS.

YOU ARE NOT OFFERING 404(B).

MR. SAHAM: CORRECT.

THE COURT: I AM GRANTING THAT WITHOUT PREJUDICE.

MS. BLAIR: YOUR HONOR --

THE COURT: TO EXCLUDE EXPERT TESTIMONY.

MS. BLAIR: I APOLOGIZE TO THE COURT AND TO MR. SAHAM.

I TOOK THIS MOTION FROM ANOTHER ONE SAYING WE HAD NOT RECEIVED NOTICE. WE HAVE RECEIVED NOTICE. MR. SAHAM SENT US NOTICE ON THE 16TH OF AUGUST. SO THAT WOULD NOT BE A BASIS FOR EXCLUDING THE EXPERT TESTIMONY.

I WOULD ASK THAT IT BE EXCLUDED, HOWEVER, ON THE BASIS THAT IT IS IRRELEVANT TO THE ISSUE AT HAND. IT IS UNNECESSARY TO HELP THE JURY UNDERSTAND WHAT IS GOING ON.

IT IS A VERY SMALL AMOUNT OF MARIJUANA, A 20-KILO CASE, AND AS FAR AS ANY STRUCTURE OR ORGANIZATION, I THINK THAT IS JUST AN ATTEMPT BY THE GOVERNMENT TO INDICATE THAT MR. MCGOWAN IS GUILTY, RATHER THAN TO EXPLAIN TO THE JURY HOW

THINGS WORK. IT IS UNNECESSARY FOR THEM TO UNDERSTAND HOW THE STRUCTURE AND ORGANIZATION IS HANDLED IN MEXICO, IT HAS NO BEARING ON THIS CASE.

IN ADDITION, WE WOULD AGREE -- IN FACT HAVE AGREED TO STIPULATE TO THE VALUE OTHER THAN THE STREET VALUE, BUT THE WHOLESALE AND VALUE IN MEXICO AND THE UNITED STATES, AS WELL AS IT IS A DISTRIBUTABLE AMOUNT. WE AGREE TO STIPULATE TO THAT.

IN ADDITION, IF THE EXPERT IS ADMISSIBLE, THEN WE WOULD ASK FOR A HEARING AND THE BASIS FOR HIS OPINIONS. WHAT HAS BEEN STATED IN THE RESUME IS JUST THE TYPICAL GENERAL INFORMATION THAT THEY HAVE BEEN INVOLVED IN SEVERAL DEBRIEFINGS, DISCUSSED INFORMATION WITH OTHER AGENTS, AND HAD INTERROGATED SMUGGLERS.

WE HAVE NO BASIS THAT ANY OF THAT IS TRUE OR WHAT WAY HE BASES THIS DECISION ON OR THIS INFORMATION ON.

MR. SAHAM: YOUR HONOR, WITH RESPECT TO THE VALUE, WE THINK THAT IS INHERENTLY AN IMPORTANT PART OF THE CASE, THAT A DRUG SMUGGLER WOULD NOT -- IF THE DEFENDANT DENIED KNOWLEDGE OF THE MARIJUANA, A DRUG SMUGGLER WOULD NOT LEAVE SUCH A VALUABLE ITEM WITHOUT TELLING SOMEBODY IN THE CAR. I THINK THE VALUE IS CERTAINLY AN IMPORTANT ASPECT OF THE GOVERNMENT'S CASE.

WE WOULD ASK TO GET IN THE WHOLESALE VALUE OF MARIJUANA IN TIJUANA AS WELL AS SAN DIEGO, AND A STREET VALUE

IN THE

SUPREME COURT OF THE UNITED STATES

No. 02-64

UNITED STATES OF AMERICA,

PETITIONER,

- vs -

DANIEL JOSEPH MCGOWAN,

RESPONDENT.

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OFFICE OE THE CLERK
SUPREME COURT, U.S.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN DIEGO)

ISABEL AGUILA, being first duly sworn, deposes and says: That pursuant to Rule 29.4(a) of this Court she served the within MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and BRIEF FOR RESPONDENT IN OPPOSITION TO UNITED STATES' PETITION FOR WRIT OF *CERTIORARI* TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT on the counsel for Petitioner by enclosing a copy thereof in an envelope, First Class Postage Prepaid, addressed to:

HON. THEODORE B. OLSON
Solicitor General of the United States
Department of Justice
950 Pennsylvania Avenue, N.W., Room 5614
Washington, D.C. 20530

and depositing same in the United States mails at San Diego, California on June 03, 2002.

ISABEL AGUILA, Affiant

Subscribed and Sworn to before me
this 11 day of September, 2002.

PAMELA D. BISHOP
COMM. # 1219163
NOTARY PUBLIC-CALIFORNIA
SAN DIEGO COUNTY
COMM. EXP. MAY 13, 2003

Notary Public in and for said
County and State.

(SEAL)